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4 OneEmbarcaderoCenter,Suite2600

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5 Telephone:(415)398-3344

Facsimile:(415)956-0439

6 AttorneysforDefendant

7 GreenPointMortgageFunding,Inc.

8 UNITEDSTATESDISTRICTCOURT  
9 NORTHERNDISTRICTOFCALIFORNIA  
SANJOSEDIVISION

10 CARLOSH.PEREZ,individually,andon  
11 behalfofthegeneralpublic,

12 Plaintiff,

13 vs.

CaseNo.:5:08-CV-01972-HRL

**GREENPOINTMORTGAGE  
FUNDINGINC'SNOTICEOF  
MOTIONANDMOTIONTODISMISS  
PURSUANTTOFRCP12(B)(6)**

14 GMACMORTGAGEUSACORPORATION,  
a/k/aGMACMORTGAGE,LLC,aDelaware  
15 corporation;MORTGAGEELECTRONIC  
REGISTRATIONSYSYSTEMS,INC.,a  
16 Delawarecorporation;EXECUTIVE  
TRUSTEESERVICES,LLC,aDelaware  
17 limitedliabilitycompany;GREENPOINT  
MORTGAGEFUNDING,INC.,aNewYork  
18 corporation;ANDRUS&ASSOCIATES,  
INC.,aCaliforniacorporation;PAULRAY  
19 ANDRUS,individuallyandinhisofficial  
capacity;HOMECOMINGSFINANCIAL,  
20 LLC,aDelawarelimitedliabilitycompany;  
COUNTRYWIDEHOMELOANS,INC.,a  
21 NewYorkcorporation;SOUTHPACIFIC  
FINANCIALCORPORATION,aCalifornia  
22 corporation;RESIDENTIALMORTGAGE  
CAPITAL,d/b/aFIRSTSECURITYLOAN,a  
23 Californiacorporation;JAMESJOHN  
CHAPMAN,individuallyandinhisofficial  
24 capacity;LUISG.BARRIOS,individuallyand  
inhisofficialcapacity;ELIZABETHP.  
25 CAMPOS,individuallyandinhisofficial  
capacity;andDOESIthrough20,inclusive.,

26 Defendants.

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that, on \_\_\_\_\_ 2008, or as soon thereafter as may be  
3 heard in the above-entitled Court, located at 280 South 1st Street, San Jose, California, defendant  
4 GreenPoint Mortgage Funding, Inc. will and hereby does move to dismiss the First Amended  
5 Complaint of Plaintiff Carlos Perez pursuant to Federal Rule of Civil Procedure 12(b)(6) on the  
6 ground that Plaintiff's 12th cause of action for "elder abuse" fails to state a claim for which relief  
7 may be granted.

8 The Motion is based on this Notice, the accompanying Memorandum of Points and  
9 Authorities, the First Amended Complaint, and all other papers on file in this action.

10 DATED: May 28, 2008

SEVERSON & WERSON  
A Professional Corporation

11 By: /S/  
12 Sunny S. Huo

13 Attorneys for Defendant  
14 GreenPoint Mortgage Funding

15 I hereby attest that I have on file all holograph signatures for any signatures indicated by a  
"conformed" signature (/S/) within this filed document.  
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Facsimile: (415) 956-0439

6 Attorneys for Defendant

7 GreenPoint Mortgage Funding, Inc.

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

10 CARLOS H. PEREZ, individually, and on  
11 behalf of the general public,

12 Plaintiff,

13 vs.

14 GMAC MORTGAGE US A CORPORATION,  
a/k/a GMAC MORTGAGE, LLC, a Delaware  
15 corporation; MORTGAGE ELECTRONIC  
REGISTRATIONS SYSTEMS, INC., a  
16 Delaware corporation; EXECUTIVE  
TRUSTEES SERVICES, LLC, a Delaware  
17 limited liability company; GREENPOINT  
MORTGAGE FUNDING, INC., a New York  
18 corporation; ANDRUS & ASSOCIATES,  
INC., a California corporation; PAUL RAY  
19 ANDRUS, individually and in his official  
capacity; HOME COMINGS FINANCIAL,  
20 LLC, a Delaware limited liability company;  
COUNTRYWIDE HOME LOANS, INC., a  
21 New York corporation; SOUTH PACIFIC  
FINANCIAL CORPORATION, a California  
22 corporation; RESIDENTIAL MORTGAGE  
CAPITAL, d/b/a FIRST SECURITY LOAN, a  
23 California corporation; JAMES JOHN  
CHAPMAN, individually and in his official  
24 capacity; LUIS G. BARRIOS, individually and  
in his official capacity; ELIZABETH P.  
25 CAMPOS, individually and in her official  
capacity; and DOES I through 20, inclusive.,

26 Defendants.  
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Case No.: 5:08-CV-01972-HRL

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
GREENPOINT MORTGAGE  
FUNDING INC.'S MOTION TO  
DISMISS**

Date: July 28, 2008

Time: 9:00 a.m.

Dept.: 8

Judge: Judge James Ware

## I. INTRODUCTION

Plaintiff Carlos Perez has sued several mortgage lenders for various violations related to the origination of certain residential mortgage loans.

By this motion, Green Point Mortgage seeks to dismiss Plaintiff's 12th cause of action on the grounds that it failed to state a claim.

Plaintiff's 12th cause of action is for "Elder Abuse"—specifically, for violation of California's Elder Abuse Act (Cal. Welf. & Inst. Code, § 15600 *et seq.*). The Elder Abuse Act, however, does not provide for an independent cause of action, only enhanced remedies for other causes of action. Accordingly, that "cause of action" fails and should be dismissed.

## II. ARGUMENT

### A. Alleged Violation Of The Elder Abuse Act Is Not A Cause of Action

Plaintiff's 12th cause of action is for the alleged violation of California's Elder Abuse Act. Such a violation, however, does not give rise to an independent cause of action.

In *ARA Living Ctrs.-Pac., Inc. v. Superior Court*, the California court of appeal traced the legislative history of the Elder Abuse Act and concluded that it "fell short of creating a cause of action" for elder abuse. (*ARA Living Ctrs.-Pac., Inc. v. Superior Court* (1993) 18 Cal. App. 4th 1556, 1563-64.)

This was reaffirmed more recently by the court of appeals in *Berkley v. Dowds*: the Elder Abuse Act "does not create a cause of action," instead, it permits the recovery of certain heightened remedies<sup>1</sup> under other causes of action. (*Berkley v. Dowds* (2007) 152 Cal. App. 4th 518, 529.)

Plaintiff's 11th cause of action fails as a plead and therefore should be dismissed.

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<sup>1</sup> Plaintiff has already sought the "enhanced remedies" in his other causes of action.

**III. CONCLUSION**

For the foregoing reasons, GreenPoint requests that the Court grant this motion.

DATED: May 28, 2008

SEVERSON & WERSON  
A Professional Corporation

By: /s/Sunny S. Huo  
Sunny S. Huo

Attorneys for Defendant  
GreenPoint Mortgage Funding

I hereby attest that I have on file all holograph signatures for any signatures indicated by a  
“conformed” signature (/s/) within this filed document.

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8 UNITED STATES DISTRICT COURT  
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10 CARLOS H. PEREZ, individually, and on  
11 behalf of the general public,

12 Plaintiff,

13 vs.

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18 corporation; ANDRUS & ASSOCIATES,  
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21 New York corporation; SOUTH PACIFIC  
FINANCIAL CORPORATION, a California  
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CAPITAL, d/b/a FIRST SECURITY LOAN, a  
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25 CAMPOS, individually and in her official  
capacity; and DOES I through 20, inclusive.,

26 Defendants.  
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Case No.: 5:08-CV-01972-HRL

**[PROPOSED] ORDER GRANTING  
GREENPOINT MORTGAGE  
FUNDING INC.'S MOTION TO  
DISMISS**

Date: July 28, 2008

Time: 9:00 a.m.

Dept.: 8

Judge: Judge James Ware

1 The Motion of defendant GreenPoint Mortgage Funding, Inc. ("GreenPoint") for an order  
2 dismissing the 12th Cause of Action in Plaintiff's First Amended Complaint has been duly  
3 noticed and served on all interested parties, and came on regularly for hearing before this Court.

4 All arguments, papers and evidence considered and good cause appearing, the Court  
5 hereby orders that:

6 1. GreenPoint's 12(b)(6) Motion to Dismiss is GRANTED WITHOUT LEAVE TO  
7 AMEND to Plaintiff's 12th cause of action for "elder abuse".

8 IT IS SO ORDERED.

9 DATED: \_\_\_\_\_

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